Supreme Court, U.S.
FILED

98 317 AUG 19 1998

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1997

KIM D. SIGSBEY,

Petitioner,

v.

THE HONORABLE MERRILL HARTMAN
Judge of the 190th Judicial District
Dallas County District Court,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Texas

PETITION FOR A WRIT OF CERTIORARI

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62 pp

QUESTIONS PRESENTED FOR REVIEW

1. In Texas where direct and thorough civil appeals from adverse lower court decisions are provided as a matter of right, without any review of the appeal for frivolousness by the trial Court, does Texas' Civil Practice and Remedies Code Section 13.003 violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, by conditioning the directness and thoroughness of only indigent appellant's appeals on the trial Court's review of the appeal for frivolousness.

2. If the stated purpose of the trial court's review of appeals pursuant to Texas Civil Practice and Remedies Code Section 13.003 is to ensure that the State of Texas does not expend State resources on frivolous civil appeals, may Texas, consistent with the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, limit the class of State expenditures that trigger a CPRC 13.003 trial court review, to expenditures that are associated only with indigent applicants seeking a free transcript, while excluding all State expenditures that are associated with any frivolous appeal regardless of whether it is filed by an indigent or non-indigent appellant, thereby resulting in non-indigent applicant's appeals being excluded from trial court review for frivolousness despite the State resources that will be expended if the non-indigent's appeal is frivolous.

3. In a State that provides direct and thorough civil appeals from adverse lower court jury trials as a matter of right, may the State, consistent with the Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution, enact laws and rules of appellate procedure that empower the

QUESTIONS PRESENTED FOR REVIEW – Continued

lower court alleged in an indigent appellant's appeal to have erred at trial, to impinge upon that indigent appellant's right to a direct and thorough appeal without equally empowering the trial court, when claimed to have erred by a non-indigent appellant, to impinge upon that non-indigent's right to a direct and thorough appeal.

4. In a State that provides direct and thorough civil appeals from adverse lower court jury trials as a matter of right, may the State, consistent with the Due Process Clause of the Fourteenth Amendment of the United States Constitution, enact laws and rules of appellate procedure that condition an indigent appellant's right to a thorough appeal on the trial judge's review of his/her own conduct at trial.

PARTIES TO THE PROCEEDING

The parties to the writ of mandamus filed in the Supreme Court of Texas are the following: Plaintiff/ Appellant/Realtor/Petitioner:

Kim D. Sigsbey

Trial Judge/Respondent:

The Honorable Merrill Hartman
Judge of the 190th Judicial District
Dallas County District Court

Real Parties In Interest:

Defendants/Appellants: Denise & Larry Wolford
Indigency Contestor: Dallas County Texas
State of Texas

Trial Counsel:

Janet R. Randle for Plaintiff/Appellant/Relator

Brian Fant for Defendants

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PETITION FOR WRIT OF CERTIORARI

Petitioner Kim D. Sigsbey, respectfully petitions for a writ of certiorari to review the Constitutionality of the Texas Civil Practice and Remedies Code § 13.003.

OPINIONS BELOW

No opinions were rendered by either the Supreme Court of Texas nor the Fifth Court of Appeals at Dallas, Texas. Both courts denied Petitioner's writs of mandamus without comment. The Supreme Court of Texas overruled Petitioner's motion for rehearing without comment as well.

JURISDICTION

1. Petitioner perfected her appeal in the Court of Appeals for the Fifth District of Texas, Dallas on January 16, 1998 and included her affidavit of indigency as required under TRAP 20.1 App. 7-8, App. E.

2. A timely contest to Petitioner's affidavit of indigency was filed by Dallas County. Pursuant to Texas Rule of Appellate Procedure 20.1 the trial court held the required hearing on January 23, 1998 and later that day entered its *Order Sustaining Contest* and denying Petitioner's right to a trial transcript free of charge. App. C.

3. Petitioner filed a motion with the Court of Appeals requesting an extension of the date the Appellate record was to be filed with the court which required the trial transcript. On February 26, 1998 the Court of Appeals granted Petitioner's motion and

extended the time for the filing of the appellate record to thirty days from the date of the order. App. 20, App. I.

4. Petitioner's filed her Writ of Mandamus seeking discretionary review of the trial court's *Order Sustaining Contest* on March 3, 1998. App. 21-33, App. J. The writ was denied by the Fifth Court of Appeals at Dallas, Texas on March 4, 1998. App. 2, App. B.

5. Petitioner thereafter filed a motion to again extend the time for the appellate record to be filed in the Court of Appeals to allow Petitioner time to file an original writ of mandamus proceeding in the Supreme Court of Texas and thereafter file a writ of certiorari in the United States Supreme Court.

6. The Fifth Court of Appeals granted Petitioner's motion and abated Petitioner's appeal on March 30, 1998. App. 34, App. K.

7. Petitioner filed an Original Writ of Mandamus Proceeding in the Supreme Court of Texas seeking review of the trial court's Order Sustaining Contest. App. 35-37, App. L. The writ of mandamus was denied by the Supreme Court of Texas on March 30, 1998. App. 1, App. A.

8. The Supreme Court of Texas overruled Petitioner's motion for rehearing on May 21, 1998. App. 5, App. D.

9. Upon the Supreme Court of Texas' overruling of Petitioner's motion for rehearing, the matter became final. Accordingly, the jurisdiction of this court is invoked under 28 U.S.C. § 1257.

10. As this proceeding draws into question the constitutionality of a statute of the State of Texas, and neither the State nor any agency, officer, or employee thereof is a party, 28 U.S.C. § 2403(b) may apply, and as such, a copy of this *Petition for Writ of Certiorari*

has been served on the Attorney General of the State of Texas.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. **Section 1 of the Fourteenth Amendment to the United States Constitution provides:**

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. **Texas Civil Practice & Remedies Code § 51.012 provides:**

Appeals or Writ of Error to Court of Appeals. In a civil case in which the judgment or amount in controversy exceeds $100, exclusive of interest and costs, a person may take an appeal or writ of error to the court of appeals from a final judgment of the district or county courts.

3. **Texas Rule of Appellate Procedure, Rule 20 provides in pertinent part (full text of Rule 20 at App. 7-12, App. E):**

20.1 Civil Cases.

(a) Establishing indigence. A party who cannot pay the costs in an appellate court may

proceed without advance payment of costs if:

(A) The party files an affidavit of indigence in compliance with this rule;

(B) the claim of indigence is not contested or, if contested, the contest is not sustained by written order; and

(C) the party timely files a notice of appeal. . . .

[Portions omitted]

(c) When and where affidavit filed.

(1) Appeals. An appellant must file the affidavit of indigence in the trial court with or before the notice of appeal. . . .
[Portions omitted]

(iii) Hearing and decision in the trial court.

(1) Notice required. If the affidavit of indigence is filed in the trial court and a contest is filed, . . . the trial court must set a hearing and notify the parties and the appropriate court reporter of the setting.

(2) The trial court must either conduct a hearing or sign an order extending the time to conduct a hearing. . . .

[Portions omitted]

(4) Time for written decision; effect. Unless – within the period set for the hearing – the trial court signs an order sustaining the contest, the affidavit's allegations will be deemed true, and the party will be allowed to proceed without advance payment of costs.

[Portions omitted]

4. Section 13.003 of the Texas Civil Practices & Remedies Code provides:

(a) Subject to Subsection (c), a court reporter shall provide without cost a statement of facts and a clerk of a court shall prepare a transcript for appealing a judgment from the court only if:

(1) an affidavit of inability to pay the cost of the appeal has been filed under the Texas Rules of Appellate Procedure; and

(2) the trial judge finds:

(A) the appeal is not frivolous;

(B) the statement of facts and the clerks transcript is needed to decide the issue presented by the appeal.

(b) In determining whether an appeal was frivolous, a judge may consider whether the appellant has presented a substantial question for appellate review.

(c) the trial judge may order a clerk of a court to prepare a transcript, or any part of the transcript, necessary for making the determination required by subsection (a)(2).

5. Rule 324 of the Texas Rules of Civil Procedure provisions: (Full text of Rule at App. 13, App. F)

[Portions omitted]

(b) **Motion for New Trial Required.** A point in a motion for new trial is a prerequisite to the following complaints on appeal:

[Portions omitted]

(2) A complaint of factual insufficiency of the evidence to support a jury finding;

(3) A complaint that a jury finding is against the overwhelming weight of the evidence;

(4) A complaint of inadequacy or excessiveness of the damages found by the jury; or

STATEMENT OF THE CASE

Petitioner was a plaintiff in a motor vehicle collision that occurred in 1993, wherein plaintiff alleged monetary damages in excess of $250,000 and physical injuries of closed head injury and reflex sympathetic dystrophy.

The jury trial was presided over by the Honorable Merrill Hartman. After eight days of testimony, wherein five doctors (two surgeons, an anaesthesiologist, neurologist and a neuro-psychologist), the investigating police officer, an accident construction engineer, several private witnesses and Plaintiff testified, and over $40,000 in medical bills were admitted during Plaintiff's case in chief (no witnesses were called by the defense) the jury rendered its verdict finding the defendant was 60% negligent and that plaintiff incurred only $750 in damages.

As required by TRCP, 324, Petitioner timely filed her motion for new trial, preserving said errors regarding sufficiency of the evidence and jury error in rendering a verdict against the overwhelming preponderance of the evidence presented. App. 13, App. F and App. 14-18, App. G. The trial court denied Petitioner's motion for new trial on December 3, 1997. App. 19, App. H.

On January 16, 1998, Relator timely perfected her appeal along with her affidavit of indigency. On the same day, in accordance with TRAP 20.1(e), Dallas County filed a contest to Petitioner's affidavit.

The hearing on the contest was timely held on January 23, 1998. The court sustained Dallas County's contest denying Petitioner a free trial transcript and ruling that the appeal (which had yet to be prepared or argued) was frivolous under Civil Practice and Remedies Code § 13.003. App. 3-4, App. C.

Petitioner's only relief was to file a writ of mandamus in the court of appeals or go forward on appeal knowing the appellate court could not review preserved errors of sufficiency of evidence without the benefit of the trial transcript.[1]

Petitioner filed a timely motion to continue the date to file the appellate record and appellant's brief until the appellate court could review Judge Hartman's Order Sustaining Contest. The Court of Appeals extended the deadline. App. 20, App. I.

Petitioner then filed a writ of mandamus in the same appellate court in which her appeal was pending and raised for the first time challenged the constitutionality of Texas Civil Practice and Remedies Code § 13.003. See

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[1] Texas law requires a full transcript of the trial as part of Petitioner's appellate record because Petitioner's appeal contained challenges to the sufficiency of the evidence presented at trial, in addition to Petitioner's challenges to the jury's verdict as overwhelming against the preponderance of the evidence.

excerpted portions of Petitioner's writ at App. 21-33, App. J. Petitioner's writ of mandamus was denied by the Court of Appeals without comment the next day. App. 2, App. B.

Petitioner filed another motion to extend the time for filing the appellate record and her brief. The Court of Appeals abated the appellate proceeding. App. 34, App. K. The appeal remains abated at this time, pending this court's ruling.

Petitioner then filed an original proceeding for writ of mandamus in the Supreme Court of Texas on March 27, 1998. App. 35-37, App. L. The writ was denied without comment on March 30, 1998. App. 1, App. A. Petitioner's motion for rehearing was overruled without comment on May 21, 1998. App. 5, App. D.

Petitioner now petitions this court as a final means of relief, seeking a review of the constitutional violations alleged herein. This petition was filed within 90 days after the Supreme Court of Texas ordered Petitioners' motion for rehearing overruled.

REASONS FOR GRANTING THE WRIT

A. The Constitutional Conflict Presented Here Has Nationwide Significance and Calls for Resolution by the Highest Court.

Certiorari should be granted because the State court of last resort in the State of Texas has refused to address the serious Constitutional violations complained of herein, and in so doing, has willingly participated in and

perpetuated Texas' dual system of civil appellate review that unconstitutionally and invidiously discriminates against indigent civil appellants. The Constitution of the United States demands more from Texas' highest court.

While Petitioner acknowledges that the Texas legislature should be commended for its statutory efforts to make trial transcripts available to indigent appellants at no cost, it should not be allowed to continue its unconstitutional two-tiered system of appellate review which preserves the rights of non-indigent appellants and invidiously impinges upon the rights of appellants who are economically disadvantaged. When Texas Civil Practice and Remedies Code § 13.003 is examined in conjunction with applicable rules of Texas civil and appellate procedure, it becomes clear that Texas has inadvertently created an unconstitutional two-tiered system of appellate review based solely on an appellant's application for indigent status.

It must be made clear that Petitioner does not seek review of a statute that merely requires all appellants to pay the costs of appeals, as Petitioner concurs with the Court that equal laws may constitutionally impact an indigent appellant's financial situation unequally from that of wealthier appellants. However, the Equal Protection Clause of the Fourteenth Amendment of the Constitution has no tolerance for laws that are not equal, and the statutory scheme challenged herein is not equal.

Unlike the non-indigent Texas appellant who is blessed with the financial means to pay thousands of dollars for an unimpeded and direct review of his/her preserved trial court and jury errors by a panel of impartial court of appeals jurists, the indigent Texas appellant

is subjected to laws and rules of appellate procedure that unconstitutionally allow the trial court to cast his/her own judicial errors into a whirlpool of costly judicial discretion from which the errors, although preserved, may never emerge for review by the appellate panel. This ruthless consequence cannot, in one's wildest imagination, be classified as a constitutionally allowable disparity of economic impact.

The invidious nature of the statutory scheme is that CPRC 13.003 empowers the trial Court to systematically abolish the indigent appellant's right to a full and impartial review of all trial court and jury errors by a panel of appellate jurists. Without the trial transcript the indigent appellant is unable to present its sufficiency of evidence errors to the appellate Court. In addition, the indigent appellant is deprived of the very evidence (the trial transcript) needed to obtain an appellate review of the trial Court's determination of frivolousness. The indigent appellant's civil appeal as a matter of right now becomes, as clearly established by the procedural posture of this case, one of discretionary review by mandamus, thereby depriving the indigent appellant of her right to a direct and thorough appellate review of errors committed at trial as well as those errors committed at the contest hearing.

What exactly does it mean for a State to provide civil appeals as a matter of right? Petitioner argues that two elements are essential: (1) review by an impartial panel of jurists; and (2) the facts necessary for review. The statutory scheme described above effectively eliminates both of these for the indigent appellant, and by so doing unconstitutionally impinges on the indigent appellant's

Fourteenth Amendment rights of due process and equal protection afforded under the United States Constitution.

B. Texas Civil Practice & Remedies Code § 31.003, On Its Face, Violates the Equal Protection Clause of the Constitution of the United States.

Petitioner is not asking this Court to prevent the State of Texas from enacting laws and rules of civil and appellate procedure appointing the trial court as the guardian of state funds before they are expended on frivolous appeals, for this is clearly within the State's power to do so and is a worthy task. Petitioner is asking for equality in a law that purports to classify both the State resources to be protected by frivolous appeals and the source of the frivolous appeal themselves. As currently constructed, *Texas Civil Practice & Remedies Code* § 13.003 does neither.

A review of CPRC § 13.003 on its face reveals the inequality of focusing only on the cost of a complimentary trial transcript. By definition, only indigent appellants qualify for a free trial transcript. No other rule of civil or appellate procedure requires a similar review for non-indigent appellants. By limiting CCP 13.003's purpose to the unnecessary cost of complimentary trial transcripts (which is not a State expenditure) the State of Texas has conveniently ensured that only indigent appellant's will be subject to the draconian burdens imposed by the statute. Affluent appellants are left free to file frivolous appeals.

Petitioner contends there is no rationale basis for excluding affluent appellants from trial Court's screening.

C. Constitutional Questions Presented Herein Have Nationwide Significance and Call for a Resolution by the Highest Court.

The rights afforded by the Fourteenth Amendment of the United States Constitution to citizens unable to afford State services necessary for a thorough appeal in civil cases is anything but clear. The historical path of this Court pronouncements of Constitutional protections to indigent civil appellants is cluttered with questionable references to the Due Process Clause, uncertain analogies to criminal prosecution proceedings, arguable civil exceptions for narrowly tailored fundamental rights, and inexplicable references to case precedent as well as dissents in cases such as *Griffin et al. v. Illinois, supra; Coppedge v. United States;*[2] *Ortwein et al. v. Schwab et al.;*[3] *Adkins v. E.I. DuPont;*[4] *Denton v. Hernandez;*[5] *Lindsey v. Normet;*[6] *Lewis v. Fletcher;*[7] and *M.L.B. Petitioner v. S.L.J.*[8]

Lower Federal and State court opinions attempting to address the problem shed no additional light on the scope of the Constitution's protection afforded to the "ordinary" indigent civil appellant in a State that affords appeals to a higher court as a matter of right. However,

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[2] 369 U.S. 438

[3] 410 U.S. 656

[4] 335 U.S. 331

[5] 504 U.S. 25

[6] 405 U.S. 56

[7] 518 U.S. 343

[8] 117 S. Ct. 1996

the Court of Appeals of Texas in *De La Vega v. Taco Cabana, Inc.*[9] just recently reviewed CPRC § 13.003 in April of this year finding that *Coppedge* "does require that she [the indigent appellant] receive a sufficient record, without charge, to establish the trial court erred in finding that her appeal is frivolous." (Citing *Denton*, 504 US at 27, for the proposition that *Coppedge* applies to appellants in civil, as well as criminal appeals.)[10]

In the instant case the Court is presented with the State of Texas' statutory attempt to address the indigent civil appellant's need for a trial transcript, while at the same time protecting its resources from the misuse of those filing frivolous appeals. The task is not impossible, but it is frought with constitutional pitfalls of which this Court is the guardian.

Granting this writ will allow the Court to sweep inappropriate Constitutional references meant for criminal appeals from the lexicon of court cases involving appeals filed by indigent civil litigants. In addition, it will allow the court to clear the way for States wanting to create laws that do not impermissibly impinge the indigent civil appellant's constitutional protections, and at the same time protect the State's precious resources.

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[9] 1998 Tex. App. Lexis 2069

[10] *De La Vega* at 2071

D. The Inherent Nature of the Activity Complained of Herein, Ensures Limited Scrutiny of Unconstitutional State Activity.

Lastly, and maybe most importantly, certiorari should be granted because the unconstitutional activity from which petitioner seeks relief (on behalf of herself and other indigent appellants in Texas) inherently imposes on an already economically disadvantaged class of citizens, additional economic and procedural burdens which greatly increase the probability that the unconstitutional activity will go forever unchecked. Too few indigent appellants are able to command the human and financial resources necessary to reach this level of discretionary review.

CONCLUSION

The Texas Supreme Court has turned a deaf ear to Petitioner's exercise of her Constitutional right to equal protection under the law. As such, this writ is Petitioner's last opportunity to obtain what all non-indigent Texan appellants obtain every day as a matter of right, a thorough non-discretionary review of the errors Petitioner preserved at trial, and to have those errors reviewed by an impartial panel of appellate jurists assigned to review the decisions of the trial court in question. Petitioner wants nothing more and nothing less than what is demanded by the United States Constitution.

Dated: August 19, 1998

Respectfully submitted,

RICHARD GALLOWAY ANDERSON
Counsel of Record
THE LAW OFFICES OF
RICHARD G. ANDERSON
Attorney for Petitioner

APPENDIX A

(SEAL)

THE SUPREME COURT OF TEXAS

Orders Pronounced March 30, 1998

MISCELLANEOUS

THE FOLLOWING PETITION FOR WRIT OF MANDAMUS IS DENIED.

98-0278 IN RE KIM D. SIGSBEY
motion for emergency stay overruled

APPENDIX B

Order issued March 4, 1998

[SEAL]

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-98-0359-CV

IN RE KIM D. SIGSBEY, Relator

FROM THE 192D DISTRICT COURT
OF DALLAS COUNTY, TEXAS

ORDER

Before Justices Chapman and Wright

Relator's application for writ of mandamus is **DENIED.**

/s/ Carolyn Wright
CAROLYN WRIGHT
JUSTICE

APPENDIX C

CAUSE NO. 94-04654-K

KIM D. SIGSBEY	§	IN THE COUNTY COURT
VS.	§	OF DALLAS COUNTY, TEXAS
DENISE L. WOLFORD	§	
and	§	192ND JUDICIAL
LARRY M. WOLFORD	§	DISTRICT

ORDER SUSTAINING CONTEST

CAME ON TO BE HEARD this day, in the above entitled and numbered cause, the motion of Bill Long, District Clerk of Dallas County, Texas, contesting Appellant's Affidavit of Inability to Pay Costs for an appeal to the Court of Appeals; and came Bill Long, District Clerk of Dallas County, Texas, by and through the Criminal District Attorney of Dallas County, Texas. Appellant Kim D. Sigsbey appeared in person and by counsel. The Court, having considered the evidence and argument of counsel, finds that Bill Long's contest was timely filed and heard and should be sustained for the reason that Appellant failed to sustain the burden of proof as required by TEX. RULES APP. PROC. 20.01. The Court further finds that the appeal does not present a substantial question for appellate review and is frivolous under *Sec. 13.003 Civ. Prac. Rem. Code.* It is therefore,

ORDERED, ADJUDGED and **DECREED** the Appellant may not appeal to the Court of Appeals the above-styled and numbered cause without making payment for the clerk's record and that Appellant is not entitled to a free or discounted court reporter's record from the court

reporter but must pay the usual fee for both records on appeal.

SIGNED this the 23 day of January, 1998.

/s/ Merrill Hartman
PRESIDING JUDGE

APPENDIX D

(SEAL) **THE SUPREME COURT OF TEXAS**
Post Office Box 12248
Austin, Texas 78711 (512) 463-1312

May 21, 1998

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The Honorable Dan Morales
Attorney General of Texas
Dan Morales, A.G.
P. O. Box 12548
Austin, TX 78711-2548

RE: Case Number 98-0278
Court of Appeals Number: 05-98-00359-CV
Trial Court Number: 94-4654-K

Style: IN RE KIM D. SIGSBEY
Original Mandamus Proceeding

Dear Counsel:

Today, the Supreme Court of Texas overruled relator's motion for rehearing of the petition for writ of mandamus in the above referenced case.

Sincerely,

John T. Adams, Clerk

by /s/ Illegible
Courtland Crocker
Deputy

cc: The Honorable Pat McDowell
Ms. Lisa Rombok, Clerk
Mr. Bill Long
Mr. Robert G. Davis
Hon. Merrill Hartman
Ms. Angela Henderson

APPENDIX E

Texas Rules of Appellate Procedure

TRAP 20. WHEN PARTY IS INDIGENT

20.1 Civil Cases.

(a) ***Establishing indigence.*** A party who cannot pay the costs in an appellate court may proceed without advance payment of costs if:

(1) the party files an affidavit of indigence in compliance with this rule;

(2) the claim of indigence is not contested or, if contested, the contest is not sustained by written order; and

(3) the party timely files a notice of appeal.

(b) ***Contents of affidavit.*** The affidavit of indigence must identify the party filing the affidavit and must state what amount of costs, if any, the party can pay. The affidavit must also contain complete information about:

(1) the nature and amount of the party's current employment income, government-entitlement income, and other income;

(2) the income of the party's spouse and whether that income is available to the party;

(3) real and personal property the party owns;

(4) cash the party holds and amounts on deposit that the party may withdraw;

(5) the party's other assets;

(6) the number and relationship to the party of any dependents;

(7) the nature and amount of the party's debts;

(8) the nature and amount of the party's monthly expenses;

(9) the party's ability to obtain a loan for court costs;

(10) whether an attorney is providing free legal services to the party without a contingent fee; and

(11) whether an attorney has agreed to pay or advance court costs.

(c) ***When and where affidavit filed.***

(1) *Appeals.* An appellant must file the affidavit of indigence in the trial court with or before the notice of appeal. An appellee who is required to pay part of the cost of preparation of the record under Rule 34.5(b)(3) or 34.6(c)(3) must file an affidavit of indigence in the trial court within 15 days after the date when the appellee becomes responsible for paying that cost.

(2) *Other proceedings.* In any other appellate court proceeding, a petitioner must file the affidavit of indigence in the court in which the proceeding is filed, with or before the document seeking relief. A respondent who requests preparation of a record in connection with an appellate court proceeding must file an affidavit of indigence in the appellate court within 15 days after the date when the respondent requests preparation of the record.

(3) *Extension of time.* The appellate court may extend the time to file an affidavit of indigence if, within 15 days after the deadline for filing the affidavit, the party files in the appellate court a motion complying with Rule 10.5(b).

(d) ***Duty of Clerk.***

(1) *Trial court clerk.* If the affidavit of indigence is filed with the trial court clerk under (c)(1), the clerk must promptly send a copy of the affidavit to the appropriate court reporter.

(2) *Appellate court clerk.* If the affidavit of indigence is filed with the appellate court clerk under (c)(2) and if the filing party is requesting the preparation of a record, the appellate court clerk must:

(A) send a copy of the affidavit to the trial court clerk and the appropriate court reporter; and

(B) send to the trial court clerk, the court reporter, and all parties, a notice stating the deadline for filing a contest to the affidavit of indigence.

(e) ***Contest to affidavit.*** The clerk, the court reporter, or any party may challenge the claim of indigence by filing – in the court in which the affidavit was filed – a contest to the affidavit. The contest must be filed on or before the date set by the clerk if the affidavit was filed in the appellate court, or within 10 days after the date when the affidavit was filed if the affidavit was filed in the trial court. The contest need not be sworn.

(f) ***No contest filed.*** Unless a contest is timely filed, no hearing will be conducted, the affidavit's allegations

will be deemed true, and the party will be allowed to proceed without advance payment of costs.

(g) ***Burden of proof.*** If a contest is filed, the party who filed the affidavit of indigence must prove the affidavit's allegations. If the indigent party is incarcerated at the time the hearing on a contest is held, the affidavit must be considered as evidence and is sufficient to meet the indigent party's burden to present evidence without the indigent party's attending the hearing.

(h) ***Decision in appellate court.*** If the affidavit of indigence is filed in an appellate court and a contest is filed, the court may:

(1) conduct a hearing and decide the contest;

(2) decide the contest based on the affidavit and any other timely filed documents;

(3) request the written submission of additional evidence and, without conducting a hearing, decide the contest based on the evidence; or

(4) refer the matter to the trial court with instructions to hear evidence and grant the appropriate relief.

(i) ***Hearing and decision in the trial court.***

(1) *Notice required.* If the affidavit of indigence is filed in the trial court and a contest is filed, or if the appellate court refers a contest to the trial court, the trial court must set a hearing and notify the parties and the appropriate court reporter of the setting.

(2) *Time for hearing.* The trial court must either conduct a hearing or sign an order extending the time to conduct a hearing:

(A) within 10 days after the contest was filed, if initially filed in the trial court; or

(B) within 10 days after the trial court received a contest referred from the appellate court.

(3) *Extension of time for hearing.* The time for conducting a hearing on the contest must not be extended for more than 20 days from the date the order is signed.

(4) *Time for written decision; effect.* Unless – within the period set for the hearing – the trial court signs an order sustaining the contest, the affidavit's allegations will be deemed true, and the party will be allowed to proceed without advance payment of costs.

(j) ***Record to be prepared without prepayment.*** If a party establishes indigence, the trial court clerk and the court reporter must prepare the appellate record without prepayment.

(k) ***Partial payment of costs.*** If the party can pay or give security for some of the costs, the court must order the party, in writing, to pay or give security, or both, to the extent of the party's ability. The court will allocate the payment among the officials to whom payment is due.

(l) ***Later ability to pay.*** If a party who has proceeded in the appellate court without having to pay all the costs is later able to pay some or all of the costs, the appellate court may order the party to pay costs to the extent of the party's ability.

(m) ***Costs defined.*** As used in this rule, *costs* means:

(1) a filing fee relating to the case in which the affidavit of inability is filed; and

(2) the charges for preparing the appellate record in that case.

APPENDIX F

TRCP 324. PREREQUISITES OF APPEAL

(a) Motion for New Trial Not Required. A point in a motion for new trial is not a prerequisite to a complaint on appeal in either a jury or a nonjury case, except as provided in subdivision (b).

(b) Motion for New Trial Required. A point in a motion for new trial is a prerequisite to the following complaints on appeal:

(1) A complaint on which evidence must be heard such as one of jury misconduct or newly discovered evidence or failure to set aside a judgment by default;

(2) A complaint of factual insufficiency of the evidence to support a jury finding;

(3) A complaint that a jury finding is against the overwhelming weight of the evidence;

(4) A complaint of inadequacy or excessiveness on the damages found by the jury; or

(5) Incurable jury argument if not otherwise ruled on by the trial court.

APPENDIX G

NO: 94-04654-K

KIM D. SIGSBEY Plaintiff	)	IN THE DISTRICT COURT OF
v.	)	
DENISE L. WOLFORD and	)	DALLAS COUNTY, TEXAS
LARRY M. WOLFORD Defendants	)	192nd JUDICIAL DISTRICT

PLAINTIFF KIM D. SIGSBEY'S NOTICE OF MOTION AND MOTION FOR NEW TRIAL

Plaintiff, KIM D. SIGSBEY, moves the Court to order a new trial in the interest of justice and fairness.

THE FOLLOWING RELEVANT PORTION OF THE MOTION FOR NEW TRIAL HAS BEEN EXCERPTED FOR INCLUSION IN KIM D. SIGSBEY'S PETITION FOR WRIT OF CERTIORARI BEFORE THE SUPREME COURT OF THE UNITED STATES

[Portions omitted]

II

COURT ERROR IN GRANTING OF DIRECTED VERDICT FOR DEFENDANT LARRY M. WOLFORD

7. The Court erred in granting Defendant Larry M. Wolford's motion for a directed verdict and thereafter refusing to submit the issue of whether Denise Wolford was acting in the course and scope of Defendant Larry M. Wolford's employment to the jury.

8. The record reflects sufficient evidence that Denise Wolford was acting within the course and scope of her employment as to have had the issue decided by the jury.

9. Because there was factually sufficient evidence that at the time of the collision, Denise Wolford was acting in the course and scope of her employment with Larry M. Wolford, this Court should grant Kim Sigsbey's motion for new trial.

III
THE CHARGE WAS ERRONEOUS

10. The court erred by refusing to submit Plaintiff's jury question regarding whether Defendant Denise Wolford was acting in the course and scope of her employment with Defendant Larry M. Wolford at the time of collision because the instruction was supported by evidence that Denise Wolford was acting in the course and scope of said employment and an evidentiary presumption existed which allowed the jury to presume that no evidence existed that Denise Wolford paid for the Stanley Kaplan course herself. The question was tendered in substantially correct form, and was supported by the pleadings and the evidence.

11. The court erred by refusing to submit Plaintiff's jury instruction regarding the contents of Texas Transportation Code § 545.152 which was a statement of the law on making left hand turns and was supported by the pleadings and the evidence and was the basis for the Court's earlier ruling not to allow Officer Wilson to testify to said statute. By refusing said instruction the court failed to properly instruct the jury on the law of making left turns, said failure to instruct resulted in the erroneous striking of Plaintiff's *negligence per* se cause of action.

IV
JURY FINDINGS ARE AGAINST THE GREAT WEIGHT AND PREPONDERANCE OF THE EVIDENCE

12. The evidence in the complete record of this case was so weak or so against the great weight and preponderance of the evidence that the jury findings are clearly wrong or manifestly unjust.

Jury's Answer to Question Number 1:

13. The court should grant Plaintiff's motion for new trial because the jury's answer to Question number 1 is so contrary to the great weight and preponderance of the evidence and is manifestly unjust and clearly wrong.

[Portions omitted]

Jury's Answer to Question Number 2:

17. The court should grant Plaintiff's motion for new trial because the jury's answer to Question number 2 is against the great weight and preponderance of the evidence and is manifestly unjust.

[Portions omitted]

Jury Answer to Question Number 3:

22. The court should grant a motion for new trial because the jury's answer to question number 3 that Plaintiff is against the great weight and preponderance of the evidence and is manifestly unjust.

[Portions omitted]

V
TEXAS RULE OF CIVIL PROCEDURE 320 DAMAGES MANIFESTLY TOO SMALL

28. Pursuant to Texas Rules of Civil Procedure, Rule 320, new trials may be granted when the damages are manifestly too small. Plaintiff Kim D. Sigsbey respectfully submits that the damages in this case $750, are manifestly too small and are so small as to indicate that the jury was influenced by passion and prejudice, so that the only sufficient remedy is the granting of a new trial in the interest of justice and fairness.

VI
CHALLENGE TO JURY FINDING OF $750 DAMAGES

29. The court should grant a new trial because the great weight and preponderance of the evidence supports a finding that Plaintiff incurred medical costs in excess of $60,000, and the jury's answer of $750 for past damages is not based upon any admitted evidence and is manifestly unjust and as a matter of law, Plaintiff proved damages far in excess of $750.

VII
CHALLENGE TO JURY FINDING OF ZERO FUTURE DAMAGES

30. The court should grant a new trial because the great weight and preponderance of the evidence supports a finding that Plaintiff would incur future damages associated with the rehabilitation required as a result of her permanent brain injury and the jury's answer of zero future damages is manifestly unjust, and as a matter of law, Plaintiff proved some damages were appropriate.

VIII
CUMULATIVE ERROR

31. The foregoing errors cumulatively amounted to such a denial of the rights of Plaintiff as was reasonably calculated to cause and probably did cause the rendition of an improper judgment.

IX
PRAYER FOR RELIEF

32. For the reasons noted above, and in the interest of justice and fairness, Plaintiff, Kim D. Sigsbey requests that this Court order a new trial.

APPENDIX H

Cause No. 94-4654-K

KIM D. SIGSBEY	§	IN THE DISTRICT
	§	COURT
V.	§	
DENISE L. WOLFORD,	§	OF DALLAS COUNTY,
and	§	TEXAS
LARRY M. WOLFORD,	§	192ND DISTRICT COURT
Husband and Wife	§	

ORDER

On this the 3rd day of December, 1997, came on to be considered the Plaintiff's Motion for New Trial, the Court having considered the Motion and the Response to same, is of the opinion that the Motion for New Trial should be in all things denied;

It is therefore, ORDERED, ADJUDGED and DECREED that Plaintiff's Motion for New Trial be and is hereby in all things denied.

SIGNED this 3 day of December, 1997.

/s/ Merrill Hartman
JUDGE PRESIDING

APPENDIX I

Order issued February 26, 1998

(SEAL)

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-98-00075-CV

KIM D. SIGSBEY, Appellant

V.

DENISE L. WOLFORD AND
LARRY M. WOLFORD, Appellees

ORDER

The Court **GRANTS** appellant's February 12, 1998 unopposed motion to the extent it seeks an extension of time to file the record, and the time for filing the record is extended until thirty days from the date of this order. All other relief not expressly granted is **DENIED.**

/s/ Jim Moseley
JIM MOSELEY
JUSTICE

APPENDIX J

No: 05-98.00359.CV

IN THE
FIFTH COURT OF APPEALS
at Dallas, Texas

In Re **KIM D. SIGSBEY**

Realtor,

V.

THE HONORABLE MERRILL HARTMAN

Judge of the 190th Judicial District
Dallas County District Court

Respondent.

From the 192nd District Court of
Dallas County, Texas

PETITION FOR WRIT OF MANDAMUS
AND BRIEF IN SUPPORT OF THE PETITION

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ATTORNEY FOR REALTOR,
KIM KD. SIGSBEY

REALTOR REQUESTS ORAL ARGUMENT

PETITION FOR WRIT OF MANDAMUS AND BRIEF IN SUPPORT OF THE PETITION

Realtor, KIM D. SIGSBEY, submits this petition for writ of mandamus complaining of the ***Order Sustaining Contest*** signed by the Honorable MERRILL HARTMAN, presiding judge of the 192nd Judicial District Court of Dallas County, Texas sustaining Dallas County's contest to Relator's affidavit of indigence and further finding under Civil Practice and Remedies Code Section 13.003 that Relator's appeal on file with the Fifth Court of Appeals – Dallas is frivolous and does not present a substantial question of law.

As a result of the actions complained of herein, Relator has been denied equal protection under the law. In addition, as a result of the trial court's abuse of discretion regarding the matters complained of herein, Relator will loose her right to appeal her strongest argument on appeal, that the jury's verdict is against the overwhelming preponderance of the evidence.

THE FOLLOWING RELEVANT PORTIONS OF THE WRIT OF MANDAMUS HAVE BEEN EXCERPTED FOR INCLUSION IN KIM D. SIGSBEY'S PETITION FOR WRIT OF CERTIORARI BEFORE THE SUPREME COURT OF THE UNITED STATES

[Portions omitted]

ARGUMENT

Relator, respectfully presents the following legal argument in support of the issues noted herein above:

Relator Presented a *Prima Facie* Case of Indigence at the January 23, 1998 Contest Hearing.

[Portions omitted]

Respondent Abused His Discretion in Finding That Relator Did Not Meet Her Burden of Establishing Her Indigence

[Portions omitted]

Respondent Abuse His Discretion in Extending the Order Sustaining Contest to Include the Court Reporter's Transcript, When the Court Reporter Did Not File a Contest

[Portions omitted]

Texas Civil Practice and Remedies Code § 13.003 Imposes A Barrier Requirement on Realtor That Bears No Reasonable Relationship to Any Valid State Objective and Arbitrarily Discriminates Against Relator as a Member of a Class of Individuals Who File Affidavits of Inability to Pay the Cost of Appeal under Texas Rules of Appellate Procedure, and in So Exercising The Power Granted to Him Under CPRC 13.003, Respondent violated Relator's Right to Equal Protection under the United States Constitution.

After Dallas County attorney Pat Grier cross-examined Relator, Mr. Grier, without any knowledge of the evidence produced at trial, or the alleged bases for Relator's appeal, requested that Judge Hartman find Relator's appeal frivolous under Civil Practice and Remedies Code 13.001 (Relator believes Mr. Grier inadvertently citing the wrong section – he meant to cite section 13.003. **(See Appendix Exhibit 10 p. 19 lns 7 – 25 through p. 20 lns 1 –**

8.) This was the first time that the Civil Practice and Remedies Code was mentioned by Dallas County as a ground for sustaining Relator's contest. See **Appendix Exhibit 8 and Randle Aff. at ¶ 17.**

Mr. Grier made this request despite the fact that he had no personal knowledge of the evidence presented at trial, or personal knowledge of any matter raised in Relator's motion for new trial. In response to Dallas County's request Judge Hartman made a finding that Relator's appeal "does not present a substantial question for appellate review and is frivolous under Section 13.003 of the Civil Practice and Remedies Code." **(See Appendix Exhibit 11.)**

At the time of the preparation of this Petition for Writ of Mandamus Relator is ordered not tp pursue her appeal until such time as she pays the usual fee for both the clerk's record and the Court reporter's record. **(See Appendix Exhibit 11.)** As a result, Relator is now prohibited from obtaining the very Court reporter's record that would enable her to challenge Judge Hartman's finding of frivolous under CPRC § 13.003. In addition, Relator is prevented from having the Court of Appeals review her strongest argument on appeal, i.e. that the jury's finding of $750 in damages is against the great weight and preponderance of the evidence presented at trial.

For the following reasons, Relator contends that the Honorable Judge Merrill Hartman, in finding Relator's appeal frivolous under Civil Practice and Remedies Code Section 13.003, violated Relator's constitutional right to equal protection under the law.

The Statute

Civil Practice and Remedies Code Section 13.003, as it applies to appeals such as Relator's, filed on or after September 1, 1997, states in full:

> a. Subject to Subsection (c), a Court reporter shall provide without cost a statement of facts and a clerk of a Court shall prepare a transcript for appealing a judgment from the Court only if:
>
> i. an affidavit of inability to pay the cost of the appeal has been filed under the Texas Rules of Appellate Procedure; and
>
> ii. the trial judge finds:
>
> (1) the appeal is not frivolous; and
>
> (2) the statement of facts and the clerk's transcript is needed to decide the issue presented by the appeal.
>
> b. In determining whether an appeal is frivolous, a judge may consider whether the appellant has presented a substantial question for appellate review.
>
> c. The trial judge may order a clerk of a Court to prepare a transcript, or any part of the transcript, necessary for making the determination required by Subsection (a)(2).

CPRC Section 13.003 (hereinafter referred to as "the Statute") specifically imposes a burden on appellants, such as Relator, who file applications of indigence that is not imposed on other appellants.

Application to Indigent Litigants Only

No other individual or entity filing a civil appeal in the State of Texas, other than one filing an application of indigence, has their civil appeal subjected to a review for frivolous by the trial Court prior to the appeal's review by the Court of Appeals.

No other individual or entity filing a civil appeal in the State of Texas, other than one filing an application of indigence, is forced to have their appeal determined "not to be frivolous" by the very tribunal whose actions may be the subject of that appeal, and, if a finding of frivolous is rendered, thereafter be denied access to the information necessary to obtain a review of that tribunal's discretionary act in so ruling.

No other individual or entity filing a civil appeal in the State of Texas, other than one filing an application of indigence, can have appellate review of the sufficiency of the evidence denied by reason of a trial Court's finding that their appeal is frivolous, which thereafter effectively denies the indigent appellant access to the very information needed to obtain an abuse of discretion review of the Court's frivolous finding.

The Constitution's Guarantee of Equal Protection Under The Law

While the right to an appeal is not in and of itself a Constitutional right, the United States Supreme Court has clearly stated that if a State affords the right to appeal generally, the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution prohibits a State from making lack of economic means an effective

bar to the exercise of that right. See *M.L.B. Petitioner v. S.L.J. Individually and as Next friend of the Minor Children, S.L.J. and M.L.J., et UX.* 117 S.Ct. 555, 574; 1996 U.S. LEXIS 7647; 136 L.Ed. 2d 473 (1996).

In addressing the issue of economic discrimination and the poor's access to the appellate process, *Griffin v. Illinois,* 351 U.S. 12, 21 (1955) has been repeatedly cited as the "foundation case" concerning access to appeal in general, and transcripts needed to pursue appeals in particular. See *M.L.B. Petitioner* at 573. In summarizing *Griffin* and its succeeding decisions the *M.L.B. Petitioner* Court quoted its decision in *Rinaldi v. Yeater,* 384 U.S. 305, 310, 16 L.Ed.2d 577, 86 S.Ct. 1497 (1966):

> This Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts.

M.L.B. Petitioner at 574.

Although *Griffin* focused on appeals in the criminal context, *M.L.B. Petitioner* made it clear that the Supreme Court has not limited the application of the Equal Protection Clause in these instances solely to criminal appeals. Citing *Lindsey v. Normet,* 405 U.S. 56, 31 L.Ed. 2d 36, 92 S.Ct. 862 (1972) the *M.L.B. Petitioner* Court pointed out that State laws that raise a substantial barrier to civil appeal for a particular class of litigants (*Lindsey* involved litigants who were facing eviction) which is not faced by any other litigant, will be subject to the analysis mandated by the Equal Protection Clause of the Fourteenth Amendment.

Lindsey involved an Oregon Statute that required litigants facing eviction to post a double bond for appealing a forcible entry/wrongful detainer action. The *Lindsey* Court found that the portion of the Oregon Statute, which created a double standard of appeal for those of less economic means (evicted tenants), violated the Equal Protection Clause. Section 13.003 draws the economic lines between the poor and the affluent much clearer than the evicted tenants in *Lindsey*, i.e., those unable to pay for appellate costs and those able to pay.

The *Lindsey* Court reiterated the *Griffin v. Illinois* line of cases for the fundamental principal that if a litigant has obtained "full and fair trial on the merits . . . , the Due Process Clause of the Fourteenth Amendment does not require a State to provide appellate review." *Lindsey*, 405 U.S. at 77. In addressing the Equal Protection Clause of the Fourteenth Amendment, *The Lindsey* Court went on to add that:

> When an appeal is afforded, however, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause.

Id.

Similar to the Oregon Statute struck down in *Lindsey*, *Civil Practice and Remedies Code Section 13.003* (hereinafter referred to as "Section 13.003") capriciously and arbitrarily imposes a barrier to appeal upon a class of indigent applicants. However, unlike the double bond barrier in *Lindsey*, the barrier imposed by Section 13.003 is not

clearly discernible on the face of the statute.[1] To expose the underlying capricious and arbitrary standard affecting Relator's right to appeal, this Court, as the Supreme Court did in *Lindsey*, must closely examine the practical consequences flowing from the application of Section 13.003 and a subsequent finding that the applicant's appeal is frivolous.

On its face, Section 13.003 appears to operate as a screen to frivolous appeals. However the screen acts as a "frivolous sieve" for only those appellants unfortunate enough to have to seek financial assistance to obtain the very record required for thoroughgoing appeal. As pointed out herein above, no other Texas civil litigant has its alleged trial errors reviewed, prior to appeal, by the very Court from which it is seeking relief. If Section13.003 applied to all litigants seeking appeals, Relator and other indigent applicants would have no complaint, for the frivolous appeal hoop would be one through which all civil litigants would be required to jump. But as it currently stands, it is only the economically less fortunate who are required to meet this test, while the more affluent freely are allowed to take their meritless appeals to a

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[1] Relator respectfully suggests that Civil Practice and Remedies Code Section 13.001 would fail under the same Equal Protection Analysis provided herein, but that Statute is not before this Court.

higher and different Court of review.[2] For the truly indigent appellant, a frivolous finding under Section 13.003, as a practical matter, forecloses a thoroughgoing appeal no matter how meritorious their case may be. The Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States demands more of the State of Texas than Section 13.003 provides.

The United States Constitution

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Equal Protection Clause found in the Fourteenth Amendment cited above, requires that States seeking to discourage patently insubstantial appeals must fashion statutes that are reasonably tailored to achieve this meritorious goal, but are procedurally applied uniformly and in a nondiscriminatory fashion. *Lindsey* at 78. Section

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[2] Relator acknowledges the Appellate Court's jurisdiction, pursuant to TRAP 45, to find that any civil appellant's appeal is frivolous, and does not challenge the constitutionality of TRAP 45, as it is applied equally to all civil litigants once the appeal reaches the higher court.

13.003 clearly discriminates against indigent appellants and its unique "trial review for frivolity" is not uniformly applied to all litigants seeking appeal.

The time to perfect an appeal from a District Court case is outlined in TRAP 26. Texas also provides *an opportunity* for an indigent party to obtain financial relief from the cost of filing an appeal. See TRAP 20. However, this is where the State of Texas' double standard access to appellate review begins.

Upon meeting the requirements of TRAP 26, a non-indigent appellant moves forward with no further obstruction to having the merits of their arguments reviewed by the higher Court, regardless of whether their claims of trial Court error are frivolous. Relator, on the other hand, as an indigent applicant must now face an additional review by the very trial Court she is attempting to challenge on appeal.

As an indigent applicant, such as Relator, is required to establish that she is in fact indigent. This is not an unreasonable demand for someone seeking relief from such financial requirements. (It is expected that the cost to prepare Relator's Appellate Record will be close to $7,000.). **See Randle Aff. ¶ 7**. As part of this requirement, the indigent Affiant is required to file an affidavit stating the specific facts that establish her indigence. See TRAP 20. Once the affidavit is filed, the indigent Affiant is required to provide notice of the Affidavit to the individuals and entities that will be required to prepare the Appellate record at no cost should the Affiant be found to be indigent, (i.e., the Clerk of Court and the official Court reporter). The Clerk of the Court and the official Court

reporter thereafter have a limited time to file a contest to the Affiant's Affidavit. If a Contest is filed, the trial Court must hold a hearing. Up to this point in the process, Relator does not claim that any rule of the Texas Rules of Appellate Procedure imposed an unreasonable or unconstitutional burden on Relator.

Once the hearing is held, the Court may overrule or sustain the contest on the basis of the evidence presented at the hearing. This evidence is then subject to an "abuse of discretion" review by the Court of appeals. At this point in time the Relator was not deprived of her Equal Protection under the laws (unless the transcript to the hearing is so expensive as to deprive Relator from establishing an abuse of discretion by the court. However, once Judge Hartman made a finding that Relator's appeal was frivolous, Relator's equal protection under the law came to an abrupt end.

Judge Hartman's finding that Relator's appeal is frivolous under Section 13.003 now prevents Relator from obtaining a complete trial transcript without first paying the six or seven thousand dollars required to obtain the transcript. Without the entire transcript, Relator cannot obtain an appellate review of Judge Hartman's finding of frivolousness, for how is the Court to determine whether all of the errors and bases for appeal alleged in Relator's motion for new trial do not present substantial questions for appellate review and are frivolous if the complete transcript of the trial is not presented? It cannot, for a complete trial transcript is required for such analysis.

As previously herein mentioned, Relator has raised several issues for appeal that require this Court's review

of the entire eight-day trial transcript. These errors include, but are not limited to, the assigned error that the jury's verdict was against the great weight and preponderance of the evidence, and that its award of $750 in damages was too small. See *Herfurth v. City of Dallas*, 410 S.W.2d 453, ref. n.r.e. (Civ.App. – Dallas 1966) (Assigned errors that the verdict is against the great weight and preponderance of evidence and that the damages are too small necessitates study of the entire record of testimony.) *Shaw v. Massachusetts Bonding & Ins. Co.*, 373 S.W.2d 553 (Civ.App. – Dallas 1963) (points of error that there was insufficient evidence to sustain verdict required Court of civil appeals to consider and weigh all the evidence.). For Relator, and any other similarly situated indigent appellant, as a practical matter, a full appeal on these crucial assigned errors is foreclosed no matter how meritorious their case may be. No other civil litigant is confronted by such a substantial barrier to appellate review. Relator respectfully contends that Section 13.003's discrimination against the class of indigent applicants is arbitrary and irrational and violates the Equal Protection Clause of the Fourteenth Amendment, and as applied by Judge Hartman in this matter, has violated her right to equal protection under the law.

[Portions omitted]

APPENDIX K

Order issued March 30, 1998

[SEAL]

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-98-00075-CV

KIM D. SIGSBEY, Appellant

V.

DENISE L. WOLFORD AND LARRY M. WOLFORD, Appellees

ORDER

The Court has before it appellant's March 23, 1998 unopposed motion to extend time to file the record to allow appellant to file a petition for writ of mandamus in the Texas Supreme Court. Kim D. Sigsbey is **ORDERED** to notify this Court (1) that she filed a petition for writ of mandamus in the Texas Supreme Court within ten days of said filing, and (2) of the Texas Supreme Court's decision within ten days of the date of the Texas Supreme Court's decision.

On the Court's own motion, this appeal is **ABATED.**

/s/ Linda Thomas
LINDA THOMAS
CHIEF JUSTICE

APPENDIX L

No: 98-0278

IN THE
SUPREME COURT OF TEXAS

In Re KIM D. SIGSBEY
Realtor

REALTOR'S PETITION TO THE SUPREME COURT OF TEXAS FOR MANDAMUS AND EMERGENCY STAY OF APPELLATE PROCEEDINGS

Realtor, KIM D. SIGSBEY, submits this emergency petition for wrot of mandamus and request for stay, complaining of the ***Order Sustaining Contest*** signed by the Honorable MERRILL HARTMAN, presiding judge of the 192nd Judicial District Court of Dallas County, Texas.

For Clarity, Kim D. Sigsbey, plaintiff/appellant/relator is referred to herein as "**Relator,**" respondent, the Honorable MERRILL HARTMAN, is referred to herein as "**Judge Hartman,**" and the respective real parties in interest are referred to herein as follows: The State of Texas, referred to as the "**State;**" Defendants/Appellants Denise & Larry Wolford are referred to as "**Appellees;**" Contestor Dallas County is referred

No: 98-0278

The Supreme Court Texas

In Re KIM D. SIGSBEY

Realtor

RELATOR'S PETITION TO THE SUPREME COURT OF TEXAS FOR MANDAMUS AND EMERGENCY STAY OF APPELLATE PROCEEDINGS

Relator, KIM D. SIGSBEY, submits this emergency petition for writ of mandamus and request for stay, complaining of the ***Order Sustaining Contest*** signed by the Honorable MERRILL HARTMAN, presiding judge of the 192nd Judicial District Court of Dallas County, Texas.

THE FOLLOWING RELEVANT PORTIONS OF THE WRIT OF MANDAMUS HAVE BEEN EXCERPTED FOR INCLUSION IN KIM D. SIGSBEY'S PETITION FOR WRIT OF CERTIORARI BEFORE THE SUPREME COURT OF THE UNITED STATES

[Portions omitted]

ARGUMENT

Relator Presented a *Prima Facie* Case of Indigence at the January 23, 1998 Contest Hearing.

[Portion omitted]

Dallas County Failed to Present Any Evidence at The Contest Hearing, and Thereby Failed to Meets its Burden of Producing Some Evidence to Refute Relator's Prima Facie Case of Indigence

[Portions omitted]

Respondent Abuse His Discretion in Extending the Order Sustaining Contest to Include the Court Reporter's Transcript, When the Court Reporter Did Not File a Contest

[Portions omitted]

Texas Civil Practice and Remedies Code § 13.003 Imposes A Barrier Requirement on Relator That Bears No Reasonable Relationship to Any Valid State Objective and Arbitrarily Discriminates Against Relator as a Member of a Class of Individuals Who File Affidavits of Inability to Pay the Cost of Appeal under Texas Rules of Appellate Procedure, and in So Exercising The Power Granted to Him Under CPRC 13.003, Respondent violated Relator's Right to Equal Protection under the United States Constitution.

[In the interest of brevity the argument presented to the Supreme Court of Texas in this section has been omitted because it is identical to the legal arguments under the identically labeled section in Petitioner's writ of mandamus that was presented to the Texas Court of Appeals. See App at ___].

[Portions omitted]

APPENDIX M

No: 98-0278

IN THE
SUPREME COURT OF TEXAS

In Re KIM D. SIGSBEY

Realtor

REALTOR'S MOTION FOR REHEARING OF THE DENIAL OF REALTOR'S PETITION FOR MANDAMUS

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ATTORNEY FOR RELATOR,
KIM D. SIGSBEY

No: 98-0278

IN THE

SUPREME COURT OF TEXAS

In Re KIM D. SIGSBEY

Realtor

REALTOR'S MOTION FOR REHEARING OF THE DENIAL OF REALTOR'S PETITION FOR MANDAMUS

Realtor, KIM D. SIGSBEY, requests a rehearing of *Relator's Petition to the supreme Court of Texas for Mandamus* on the grounds that a serious denial of her constitutional right to equal protection under the law, as granted by the Fourteenth Amendment of the United States Constitution, will result if Relator's appeal is allowed to go forward without the trial transcript as part of the Appellate Record.

THE FOLLOWING RELEVANT PORTIONS OF THE MOTION FOR REHEARING HAVE BEEN EXCERPTED FOR INCLUSION IN KIM D. SIGSBEY'S PETITION FOR WRIT OF CERTIORARI BEFORE THE SUPREME COURT OF THE UNITED STATES

[Portions omitted]

As of the filing of this motion the appellate court matter remains abated and thereby renders Relator's initial request for a stay of appellate proceedings moot for purposes of this rehearing.

As a result of the abatement, Relator's motion for rehearing is limited to her previously filed writ of mandamus.

Relator's Constitutional Right to Equal Protection Under the Fourteenth Amendment of the United States Constitution will be violated if mandamus does Not Issue As Texas Civil Practice and Remedies Code Section 13.003 Is Unconstitutional

Relator reasserts all arguments presented in Relator's incorporated petition, including the argument that Texas Civil Practice and Remedies Code Section 13.003 violates the Fourteenth Amendment of the United States Constitution. If this Honorable court denies Relator's petition for review, it will have ignored the constitutional violation alleged in Relator's petition, and will have limited Relator's avenue of redress to the United Supreme Court, pursuant to 28 U.S.C. § 1257. In addition, future indigent applicants' constitutional rights will be denied.

This Honorable, being given the opportunity to rule on the unconstitutionality of a statute of great import to the economically less fortunate, should review of the statute, and thereby render Constitutional guidance to the State legislature.

[Portions omitted]

Without Mandamus Relief, Relator Will Be Denied a Full Appeal On the Basis of Her Economic Status and Such Denial Will Not Have Been Reviewed

[Portions omitted]